

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Numbering Resource Optimization

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CC Docket No. 99-200

To The Commission:

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COMMENTS OF VOICESTREAM WIRELESS CORPORATION

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### Summary

VoiceStream Wireless Corporation (“VoiceStream”) commends the Commission for adopting measures in its *Report and Order* that will immediately result in the more efficient use of telephone numbers. These measures – including uniform national definitions for categories of numbering usage, enforceable mandatory reporting requirements, the updated application and approval procedure for growth codes, and the streamlined reclamation procedure – will ensure that carriers receive only those numbering resources that they genuinely need and that unused numbering resources are promptly returned to the supply of numbering resources available to all carriers.

In its *Further Notice of Proposed Rulemaking*, the Commission seeks comment on the appropriate utilization threshold that carriers must meet to qualify for growth codes; the extent to which state commissions should be permitted to modify this threshold within FCC guidelines, and the appropriateness of calculating utilization rates on a specific nationwide or rate center basis. The Commission also seeks comment on whether covered CMRS carriers should be required to participate in pooling immediately upon expiration of the LNP forbearance period and if not, what sort of transition period should be allowed. Lastly, the Commission asks if it should adopt a market-based allocation scheme in which numbering resources will be auctioned.

VoiceStream has become convinced that using a utilization percentage is inappropriate and would unreasonably discriminate against new entrants, such as VoiceStream, by putting them at a severe disadvantage in the marketplace. VoiceStream demonstrates here that the Commission’s purposes would be better served by requiring carriers to submit a months-to-exhaust (“MTE”) worksheet demonstrating that their current number inventory, will exhaust within six months. The MTE worksheet, the reliability of which has been bolstered by the Commission’s new reporting

requirements which form the basis for the worksheet itself, is a better measure of need for numbers and reliance upon it does not create the same unlawful discrimination against new entrants as the percentage utilization.

The Commission should consider only rate center-based utilization when evaluating applications for growth codes based on meeting the MTE threshold. Having available numbering resources in a remote rate center does nothing to satisfy customer demand in a rate center experiencing exhaust. Consequently, only rate center-based utilization should be evaluated. Although the Commission may wish to compile data about utilization calculated on a NPA- or nationwide basis, it should use this data for informational purposes only rather than as eligibility criteria for growth codes.

The Commission should not delegate to the states any authority to manipulate the utilization threshold. The Commission correctly stated that telephone numbers are a nationwide resource that must be utilized and governed on a nationwide basis. VoiceStream agrees, and submits that delegation to the states of any authority to manipulate utilization thresholds could upset the careful balance of policies and principles the Commission has set forth in the *Report and Order*.

VoiceStream urges the Commission not to impose pooling on wireless carriers until eight (8) months after the November 24, 2002 date when wireless carriers presently are scheduled to implement number portability in some markets. Although VoiceStream hopes it will be otherwise, it expects that number portability implementation will need refinement, particularly to accommodate wireline to wireless porting. It would not be wise to require carriers to begin implementation of number pooling until they have fully implemented number porting and these capabilities have been up and running in their networks for a sufficient amount of time to detect any operational problems.

Moreover, November 2002, is a time period in which several other major transitions will take place, including potential changes of both the North American Numbering Plan Administrator and the Pooling Administrator. As the Commission has correctly recognized in the case of wireline pooling, wireless pooling should not be implemented on a flash-cut basis. VoiceStream urges the Commission to adopt a transition plan for wireless implementation of pooling that mirrors the implementation schedule adopted for wireline carriers. Such a schedule would satisfy the same concerns that the Commission considered in establishing the wireline schedule. VoiceStream therefore supports both a delay after November 24, 2002 before the wireless pooling implementation period begins and an implementation period consistent with that adopted for wireline carriers.

The Commission also should not adopt any sort of market based allocation scheme for telephone numbers. The use of auctions would neither be consistent with the Commission's statutory authority nor achieve any additional efficiencies. Auctions would impose substantial administrative burdens and societal costs, both on the Commission and on the industry participants. These costs would fall disproportionately on new entrants that do not have the large inventory of numbers held by incumbent carriers. In light of the fact that auctioning numbers would impose disproportionate costs on new entrants, and achieve no underlying efficiency gains, the FCC should discontinue consideration of auctioning telephone numbers.

Auctioning of numbers would also, in effect, require new wireless entrants to pay twice for the right to serve subscribers, first for spectrum and second for numbers. Unlike the incumbent wireless carriers, new entrants like VoiceStream have already paid billions of dollars to the U.S. Treasury in order to serve their potential subscribers. These new entrants based their bids on the reasonable assumption that they would have necessary access to the numbering resources to use the

spectrum on the same cost-free basis as all other carriers. If numbers were auctioned, they would also have to pay for those – once again paying for a resource that carriers who had been in the market longer would not have to pay, because of their substantially greater inventory of numbers. They should not now also be shouldered with the additional and unanticipated costs of auctions. To new wireless entrants, it would be as if it had purchased a new automobile, and then told that they would have to pay an additional amount to continue using the keys for the automobile. In the context of auctions, telephone numbers equate to the car keys which must be part of the overall sale.

As set forth above, VoiceStream has an overarching purpose in participating in this proceeding – to ensure that numbers are allocated to new entrants on a timely and nondiscriminatory basis. It urges the Commission to achieve that result by adopting the proposals in these Comments.

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BEFORE THE  
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<b>In the Matter of</b>	)	
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<b>Numbering Resource Optimization</b>	)	<b>CC Docket No. 99-200</b>
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**To The Commission:**

**COMMENTS OF VOICESTREAM WIRELESS CORPORATION**

VoiceStream Wireless Corporation ("VoiceStream"), pursuant to the Commission's *Further Notice of Proposed Rulemaking* ("Further Notice"),<sup>1</sup> hereby respectfully offers its comments in the above-captioned proceeding.

**Statement of Interest**

Based in Bellevue, Washington, VoiceStream is the fastest growing provider of personal communications services in the United States. VoiceStream provides PCS services throughout the United States using Global System for Mobile Communications ("GSM") technology. VoiceStream recently merged with both Omnipoint Corporation and Aerial Communications. Now that the mergers with Omnipoint and Aerial have been completed, VoiceStream's licensed coverage area would allow it to serve three out of every four people in the United States, making VoiceStream one of the major nationwide providers of wireless communications services in the country.

VoiceStream is an industry leader in growth performance, adding 524,300 net new subscribers for the year ending December 31, 1999 compared to 193,800 net new subscribers for the

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<sup>1</sup> Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, FCC 00-104 (released March 31, 2000) (hereinafter "*Report & Order*" or "*Further Notice*" depending on context).

year ending December 31, 1998. Subsequent to the merger with Omnipoint and Aerial, it has over 1.8 million subscribers. VoiceStream expects that this high growth rate will continue as more consumers recognize the value and high quality of the innovative GSM based services that VoiceStream provides. VoiceStream must have timely access to adequate numbering resources in order to meet consumer demand, particularly given VoiceStream's industry-leading growth rate. As a comparative newcomer to the PCS marketplace, VoiceStream has applied for initial codes throughout the country over the last few years, but has also applied for growth codes, often several at one time, to meet customer demand in its more rapidly expanding markets. Virtually all of the markets in which VoiceStream provides service have faced area code exhaust one or more times during the last two years. Therefore, VoiceStream has a critical interest in the success of numbering optimization measures being designed or implemented under the aegis of this proceeding. Quite simply, VoiceStream cannot deliver service to a new customer if a telephone number is not available.

### **Summary**

VoiceStream Wireless Corporation ("VoiceStream") commends the Commission for adopting measures in its *Report and Order* that will immediately result in the more efficient use of telephone numbers. These measures – including uniform national definitions for categories of numbering usage, enforceable mandatory reporting requirements, the updated application and approval procedure for growth codes, and the streamlined reclamation procedure – will ensure that carriers receive only those numbering resources that they genuinely need and that unused numbering resources are promptly returned to the supply of numbering resources available to all carriers.

In its *Further Notice of Proposed Rulemaking*, the Commission seeks comment on the appropriate utilization threshold that carriers must meet to qualify for growth codes; the extent to



which state commissions should be permitted to modify this threshold within FCC guidelines, and the appropriateness of calculating utilization rates on a specific nationwide or rate center basis. The Commission also seeks comment on whether covered CMRS carriers should be required to participate in pooling immediately upon expiration of the LNP forbearance period and if not, what sort of transition period should be allowed. Lastly, the Commission asks if it should adopt a market-based allocation scheme in which numbering resources will be auctioned.

VoiceStream has become convinced that using a utilization percentage is inappropriate and would unreasonably discriminate against new entrants, such as VoiceStream, by putting them at a severe disadvantage in the marketplace. VoiceStream demonstrates here that the Commission's purposes would be better served by requiring carriers to submit a months-to-exhaust ("MTE") worksheet demonstrating that their current number inventory, will exhaust within six months. The MTE worksheet, the reliability of which has been bolstered by the Commission's new reporting requirements which form the basis for the worksheet itself, is a better measure of need for numbers and reliance upon it does not create the same unlawful discrimination against new entrants as the percentage utilization.

The Commission should consider only rate center-based utilization when evaluating applications for growth codes based on meeting the MTE threshold. Having available numbering resources in a remote rate center does nothing to satisfy customer demand in a rate center experiencing exhaust. Consequently, only rate center-based utilization should be evaluated. Although the Commission may wish to compile data about utilization calculated on a NPA- or nationwide basis, it should use this data for informational purposes only rather than as eligibility criteria for growth codes.

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The Commission also should not adopt any sort of market based allocation scheme for telephone numbers. The use of auctions would neither be consistent with the Commission's statutory authority nor achieve any additional efficiencies. Auctions would impose substantial administrative burdens and societal costs, both on the Commission and on the industry participants. These costs would fall disproportionately on new entrants that do not have the large inventory of numbers held by incumbent carriers. In light of the fact that auctioning numbers would impose disproportionate costs on new entrants, and achieve no underlying efficiency gains, the FCC should discontinue consideration of auctioning telephone numbers.

Auctioning of numbers would also, in effect, require new wireless entrants to pay twice for the right to serve subscribers, first for spectrum and second for numbers. Unlike the incumbent wireless carriers, new entrants like VoiceStream have already paid billions of dollars to the U.S. Treasury in order to serve their potential subscribers. These new entrants based their bids on the reasonable assumption that they would have necessary access to the numbering resources to use the spectrum on the same cost-free basis as all other carriers. If numbers were auctioned, they would also have to pay for those – once again paying for a resource that carriers who had been in the market longer would not have to pay, because of their substantially greater inventory of numbers. They should not now also be shouldered with the additional and unanticipated costs of auctions. To new wireless entrants, it would be as if it had purchased a new automobile, and then told that they would have to pay an additional amount to continue using the keys for the automobile. In the context of auctions, telephone numbers equate to the car keys which must be part of the overall sale.

As set forth above, VoiceStream has an overarching purpose in participating in this proceeding – to ensure that numbers are allocated to new entrants on a timely and nondiscriminatory basis. It urges the Commission to achieve that result by adopting the proposals in these Comments.

**I. THE COMMISSION’S RULES SHOULD ALLOW CARRIERS TO USE A MONTHS-TO-EXHAUST DEMONSTRATION AS A MEASURE OF UTILIZATION**

The Commission’s *Further Notice* initially asks what specific utilization threshold it should adopt for carriers seeking to demonstrate a need for a growth code. The Commission tentatively concludes that there should be a nationwide utilization threshold, which should be set at 50 percent and increase each year until it reaches 80 percent.<sup>2</sup> The Commission also proposes to require carriers to meet a specific rate center-based utilization threshold for the rate centers in which they are seeking additional numbering resources and seeks comment on whether state commissions should be permitted to set the rate center-based threshold within any range adopted by this Commission.<sup>3</sup>

VoiceStream shares the FCC’s belief that numbering resources must be used as efficiently as reasonably possible, and it welcomes many of the reporting and conservation measures that the FCC adopted in the *Report & Order*. VoiceStream also believes that carriers must have timely and non-discriminatory access to adequate numbering resources in order to meet consumer demand. Without adequate numbering resources, consumers will not have access to the telecommunications services they demand, and competition will suffer.

VoiceStream agrees with the Commission that utilization measures are one vehicle for determining when it is appropriate to allocate a growth code. However, percentage utilization

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<sup>2</sup> *Id.* at ¶ 248.

<sup>3</sup> *Id.*

measures should not be considered, particularly in light of the reporting and certain other obligations imposed by the Commission in the *Report & Order*. Not only is such an approach no longer needed, adoption of a specific utilization percentage that treats all carriers subject to the utilization percentage on a nondiscriminatory basis will be difficult if not impossible to achieve. Because of the differences in numbering inventory new carriers currently have, depending on whether they are incumbents or new entrants, new entrants would have a mathematical certainty of not getting their fair share of numbering resources. For example, assuming for the purpose of this example only that all numbers within a code are actually available for assignment to end users, an incumbent with 10 codes would have 50,000 telephone numbers available for assignment when it reaches a 50 percent utilization rate whereas a new entrant with one code would have only 5,000 telephone numbers available for assignment when it reaches the same utilization rate. If the Commission only allowed carriers to obtain growth codes when they reach a 50 percent utilization rate, the incumbent would be eligible for a growth code when it still had an inventory of 50,000 numbers available for assignment. The new entrant would not be eligible for a growth code until it only had an inventory of 5,000 numbers. Given that new entrants, particularly wireless entrants, launch new market areas with substantial fanfare and advertising, it would not be uncommon for 5,000 new customers to be added in a densely populated area in just a couple of months.<sup>4</sup> Yet, it takes at least three months from request date to implement a new NXX code throughout the nationwide telecommunications network. Thus, under

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<sup>4</sup> VoiceStream reminds the Commission that, wireless NXXs typically serve geographic areas of ten or more ILEC rate centers, particularly in densely populated areas where rate centers have smaller footprints.

this scenario, a new entrant could exhaust its numbering resources waiting for a new NXX code to be implemented.<sup>5</sup>

This type of discrimination violates both the intent and the letter of the Telecommunications Act of 1996. As the Commission has repeatedly recognized, the 1996 Act directs it “to remove not only statutory and regulatory impediments to competition, but economic and operational impediments as well.”<sup>6</sup> The discrimination that would result if the Commission were to rely on utilization percentages is just such an operational impediment, because it would put new entrants at substantial and unlawful disadvantage *vis a vis* their incumbent competitors.

Moreover, the Commission historically has steadfastly opposed discrimination in numbering allocation in these circumstances. The Commission has indicated that any burdens associated with the introduction of new codes must fall “in as even-handed a way as possible upon all carriers and customers affected by its introduction.”<sup>7</sup> That certainly would not be the case if the Commission relied upon utilization percentages as the means of qualifying for growth codes, because the resulting discrimination would put both new entrants and their potential customers at a severe disadvantage.

The Commission also specifically recognized in this proceeding that it is critical for it and the NANPA to administer telephone numbers in a non-discriminatory fashion when it adopted a “uniform contamination threshold for all carriers to avoid a discriminatory impact on any particular

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<sup>5</sup> Conversely, the incumbent carrier would not run out of numbers because of the large amount of inventory still in its possession. The incumbent carrier also has an advantage, in wireless in particular, because they will have a larger pool of churned numbers from which to draw, which will not be available for new entrants with substantially smaller customer bases.

<sup>6</sup> Implementation and the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, ¶ 3 (1996).

<sup>7</sup> *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech – Illinois*, 10 FCC Rcd 4596, ¶ 35 (1995).

segment of the telecommunications industry.”<sup>8</sup> In fact, the Commission declined to adopt different contamination thresholds specifically because of the potential for competitive harm resulting from such unequal treatment.<sup>9</sup>

In addition to the fact that a fixed percentage will unreasonably discriminate in favor of incumbent carriers, a fixed percentage is extremely difficult to determine. In reviewing its own number utilization, VoiceStream sees substantial disparities in the number of codes it needs based on such phenomena as the amount of roaming traffic in the particular geographic area. In areas that are more heavily populated, or have more transient traffic, its utilization of numbers is higher than in areas where these factors do not exist. A plethora of other factors affect utilization rates as well. For example, markets that have a large transient population for vacation or business purposes, such as Florida and Hawaii, and New York and Washington, respectively, require more codes than those that do not. Roaming capability is achieved by using telephone numbers that are local to the area in which the visiting customer roams. In effect, although transparent to the end user, each roaming subscriber is given a local number, known as a Mobile Subscriber Roamer Number (“MSRN”) or Temporary Local Directory Number (“TLDN”), for the duration of time the visiting customer is in the roaming territory. Compliance with the E-911 rules also requires additional number utilization. Under the E-911 network parameters, each wireless carrier must assign three telephone numbers for each cell site within a code for transmission of emergency calls to the local Public Safety Answering

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<sup>8</sup> *Report and Order* at ¶ 191.

<sup>9</sup> *Id.*



Point (“PSAP”) to assure that emergency callers can be properly located.<sup>10</sup> Given these types of considerations, it is not possible to devise a utilization rate or range that could be applied evenhandedly across all carriers.

The difficulties inherent in setting a specific percentage or range of percentages dictate that another means of determining utilization must be available for purposes of establishing carrier eligibility for growth codes. In VoiceStream’s view, this alternative utilization measure should be based on a carrier’s months-to-exhaust, as set forth in its MTE worksheet and COCUS report, for the specific rate center in which the carrier would utilize the growth code. Simply put, when a carrier faces exhaust of its number supply within a certain number of months, the carrier should be entitled to a growth code in the specific rate center in which it faces exhaust. The specific number of months-to-exhaust needs to be set at a level that assures that all carriers, and their potential customers, have a reasonable inventory of telephone numbers so that the underlying services will be available in a timely manner, as required by § 251(e).<sup>11</sup>

VoiceStream believes that allowing carriers to maintain a six-month inventory of numbering resources is reasonable. This timeframe is the minimum necessary to allow carriers to request a new code, the North American Numbering Plan Administrator (“NANPA”) to review the application and allocate the new code, and the other carriers on the Public Switched Telephone Network (“PSTN”) to load the number in their switches and ensure that the new code is recognized in the network before

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<sup>10</sup> In fact, in many instances, in order to properly install, test and implement the PSAP requirements, a carrier needs an initial code well in advance of six months, and the Commission’s numbering allocation rules must be crafted to accommodate this need.

<sup>11</sup> The Commission in the *Report & Order*, reiterated that one of the goals of § 251(e) was to “ensure that all carriers have the numbering resources they need in the rapidly growing telecommunications marketplace.” *Report & Order* at ¶ 2.

the carrier exhausts its current supply of numbers. The Commission already has determined that carriers should be entitled to have a sufficient inventory of telephone numbers to meet a six-month projection forecast,<sup>12</sup> presumably to assure that carriers have sufficient numbering resources to meet subscriber demand for services in that rate center.

Although the Commission might initially view using a six-month MTE instead of a utilization percentage as a relaxation of its requirements, that is not the case. The sequential numbering requirements of the *Report and Order* will prevent a carrier from opening a new NXX until it has fully utilized its existing resources. The requirement that an NXX code be opened to new customers within six months of activation or becomes subject to reclamation will assure that carriers will not ask for codes too far in advance of when they are expected to be needed. With these two measures alone, carriers must order new numbering resources just in time so any concerns the Commission might have in that regard carefully satisfied.

Reliance on a months-to-exhaust utilization showing instead of a percentage utilization is also the best means of assuring that carriers are treated in a competitively neutral, even-handed manner, as required. Using the same “months-to-exhaust” measure puts all carriers in the same competitive position, allowing all the carriers to obtain numbers within the same time frames, based on actual need.

VoiceStream does not see the need for establishing a national utilization threshold for purposes of determining carrier eligibility for new codes. As the Commission has recognized, the availability of numbers in particular rate centers is the relevant issue because “rate center based utilization allows carriers to obtain numbering resources in response to specific numbering

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<sup>12</sup> *Report & Order* at ¶ 191.

demands.”<sup>13</sup> In fact, the Commission has already expressly recognized the difficulty of utilizing national utilization information for purposes of code allocation, albeit in the context of urban and suburban codes. There, the Commission recognized that a “carrier may be unable to meet an NPA-wide utilization rate even when it is running into numbering shortages in particular rate centers in more densely populated areas.”<sup>14</sup>

The Commission should be the sole determiner of the utilization and months to exhaust thresholds required for assignment of growth codes. As the Commission has already found, Section 251 of the Communications Act grants it plenary jurisdiction over the North American Numbering Plan (“NANP”) and related telephone numbering issues in the United States.

In the *Report & Order*, it has exercised that authority, carefully balancing the multitude of competing interests, including those of the states. It should not now delegate authority beyond that already granted to the states or other entities, as such delegation could upset that carefully crafted balance.

Further, the Commission has already recognized that, while there is no one answer to resolve numbering issues, numbering needs to be managed in a comprehensive manner. To that end, the Commission has precluded states from modifying the definitions of the primary categories of use, preferring to codify those definitions at the federal level. The Commission was concerned with granting states this additional authority because of the uncertainty it could create for carriers “either because a state changes its rules or because the carrier operates in multiple states.”<sup>15</sup> The same is true

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<sup>13</sup> *Further Notice* at ¶ 105.

<sup>14</sup> *Id.*

<sup>15</sup> *Report & Order* at ¶ 27.

with respect to any criteria for obtaining new numbering resources. Carriers need the certainty of a federal, nationally applicable, rule that determines the circumstances under which numbering resources will be available. This uniformity will also assure that carriers in one state are using numbers in the same manner as carriers in other states, and thus no carrier will receive preferential treatment in number assignment based purely on the state in which it operates.

For these reasons, the Commission should establish a uniform federal allocation scheme in which carriers are entitled to a growth code when they face exhaust in that rate center within six months. This plan would minimize discrimination in numbering management, thereby promoting the competitive markets that the 1996 Act and the Commission strive to achieve, and ensure that all carriers utilize numbering resources more efficiently.

## **II. THE COMMISSION SHOULD NOT REQUIRE WIRELESS CARRIERS TO IMPLEMENT POOLING ON THE SAME DATE AS THEY IMPLEMENT PORTING**

The *Report & Order* imposes upon covered CMRS providers an obligation to participate in thousands-block pooling after expiration of the local number portability (“LNP”) forbearance period, which ends on November 4, 2002. The FCC now seeks comment whether there should be a transition period for covered CMRS carriers to participate in thousands-block pooling upon expiration of the LNP forbearance period, and if so, how long the forbearance period should be. If the Commission continues to require wireless carriers to participate in number pooling, VoiceStream urges the Commission to delay the initiation of the implementation period for eight months, and then to adopt an implementation transition plan based on the same criteria it has used to establish the wireline transition period.

As the Commission recognizes, covered CMRS carriers must implement LNP no later than November 4, 2002. These carriers undoubtedly will face unexpected circumstances while implementing LNP, and they should be free to address these circumstances without the additional burden of implementing number pooling, which is an entirely separate procedure. In addition to implementing LNP, carriers must modify LSMSs, SCPs, Service Order Administration systems (“SOAs”), operation support systems (“OSSs”), and switches, and then test the modifications in order to implement number pooling, as the Commission itself has recognized. The process for implementing number pooling is complicated, time-consuming and expensive. Therefore, VoiceStream believes that LNP and number pooling should be implemented and tested sequentially, not simultaneously.

VoiceStream is also concerned that implementation of number porting in the November 2002 timeframe presents substantial risks to the network. Like other carriers, VoiceStream makes no changes to its network unless absolutely necessary during November, December and January, referred to in the industry as a “quiet period.” During this whole holiday season, VoiceStream and other carriers experience substantially increased network usage due both to high holiday calling trends and the exceptionally rapid pace at which subscribers are added to the network. Many wireless carriers book half of their annual sales during the period between Thanksgiving and a few weeks after New Year’s, and thus devote the majority of their resources during that period to enrolling new subscribers on the network. Another significant risk is that the new National Pooling Administrator will be chosen, and a new NANPA may be chosen, during the autumn of 2002. VoiceStream submits that it would not be wise to require implementation of number pooling during the same time that all carriers will be working with both a new NANPA and National Pooling Administrator.

Because of its inherent risks, VoiceStream urges the Commission not to consider requiring covered CMRS carriers to begin implementation of number pooling during this “quiet period.” Rather, VoiceStream believes that the Commission should delay initiation of number pooling for a minimum of eight months.

An eight-month period for covered CMRS carriers to begin to implement number pooling following implementation of LNP is particularly reasonable considering that wireline carriers will have had approximately two and one-half years to implement number pooling after implementing LNP. The FCC required wireline carriers in the top 100 MSAs to implement LNP by December 1998, but number pooling is not expected to be implemented before June 2001. With this much time between the implementation of LNP and number pooling, these carriers will have had time to ensure that their LNP systems are operating properly before attempting to implement number pooling. Covered CMRS carriers like VoiceStream should be given a similar opportunity to implement LNP and number pooling on a staggered schedule in order to facilitate network modifications and minimize the risk of service interruptions.

The Commission should further consider how number pooling is to be phased-in once implementation begins for wireless carriers. As for wireline carriers, the implementation schedule for wireless carriers should be divided into three-month segments, each segment containing three NPAs from each of the seven NPAC regions that are within the largest 100 MSAs.<sup>16</sup> Thus, twenty-one NPAs will be pooled each quarter. This staggered implementation schedule is necessary because an overload of the telecommunications network may cause network disruptions when carriers’ Service

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<sup>16</sup> *FNPRM* at ¶ 161.

Control Points (“SCPs”) capacity has been depleted.<sup>17</sup> Moreover, NeuStar, Inc. has already informed the FCC that the timeframe for completion of the necessary administrative work to enable an NPA to be ready to pool is at least three months.<sup>18</sup> As the Commission has recognized, a staggered implementation schedule will ensure that the resources of the Pooling Administrator are not strained and that implementation is undertaken smoothly. Finally, a staggered roll-out will provide carriers time to upgrade or replace SCPs and other components of their network, as necessary, if the increased volume of ported numbers as a result of pooling requires them to do so. Therefore, VoiceStream urges the Commission to adopt a staggered implementation schedule for wireless carriers that is similar to the schedule for the wireline carriers.

### **III. THE FCC SHOULD NOT AUCTION TELEPHONE NUMBERING RESOURCES**

The Commission asks for comment on whether auctions should be utilized as a means of allocating telephone numbers. VoiceStream cannot envision any circumstances in which reliance upon auctions would be appropriate. Apart from the fact that the Commission lacks the statutory authority to auction numbering resources,<sup>19</sup> auctions would not address the efficiency with which telephone numbers are utilized.

Number efficiency or inefficiency is not a function of whether entities pay for their numbering resources. Numbering utilization is driven by an operator’s current and projected

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<sup>17</sup> *Id.* at ¶ 159.

<sup>18</sup> *Id.*

<sup>19</sup> The Commission’s authority to raising revenues or charge fees related to telephone numbering resources is limited to ensuring that all carriers bear the cost of numbering administration arrangements and number portability in a non-discriminatory manner. *See* §251(e)(2). The Act does not provide any other independent means for the Commission to raise money in the context of numbering resources.

subscribers and administration and operational needs (such as for E-911 numbers). The needs will not change depending on whether there are charges assessed. The Commission has already taken steps in the *Report & Order* to assure that numbering inventory is solely “need” based and managed in a “just-in-time” fashion, so there would be no purpose to overlaying auctions on the reporting and other requirements just adopted.<sup>20</sup>

The adoption of auctions would also lead to a series of unavoidable and unintended consequences. These would include the creation of brokers who trade in memorable and vanity telephone numbers. Their sole interest would be in buying and selling telephone numbers. Their presence would, in effect, build in another layer of distribution that has no intrinsic value. Brokers are not needed in order to allocate numbers. The NANPA, and the Pooling Administrator exist for that purpose already. INC Central Office Code Guidelines, at Section 2.1, even contain an express prohibition (“resources cannot be sold, brokered, bartered, or leased for a fee or other consideration. If a resource is sold, brokered or bartered for a fee, the resource is subject to reclamation.”) The Commission historically has not had the resources to pursue violators of these guidelines. Given current budgetary constraints, there is no reason to expect necessary resources would become available to the Commission for this enforcement activity.

The complexity of an auction implementation would also be of enormous proportion. For example, would the Commission auction off all available numbers, or would it determine to auction only a percentage of numbers available, thereby creating artificial scarcity? Would the rules allow only those carriers with a demonstrated need for numbers at a fixed point in time to be eligible to

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<sup>20</sup> Auctions would not cure the remaining inefficiencies – such as the gross underutilization of numbers that results from the plethora of rate centers.



participate in an auction, and if not, how would carriers that subsequently need numbers obtain them? By not establishing need as an eligibility criteria (or the sole criteria), would not the Commission be foregoing its entire “just-in-time” inventory premise which underlies all of the Commission’s efforts to date in this proceeding?

Auctions for numbering resources would be an aberration from the way in which the Commission has conducted spectrum auctions. Spectrum auctions, which have their own specific statutory grant of authority, are for specifically identifiable spectrum that is assigned to a specific carrier over a specific term, often at least 10 years. Carriers are also granted the expectation of renewal.

Numbers, on the other hand, have a far more transient existence. They are assigned to specific end users, returned to the carrier, aged, ported to other carriers, and returned to numbering administrators. Numbers will become even more “transient” under the new pooling and porting obligations, as numbers will flow between and among carriers and the numbering administrators. These circumstances make auctions non-workable, even if the Commission had the authority to implement them.

Auctions also would do nothing to address the most significant cause of inefficiency – the unnecessary use of multiple rate centers. It clearly would be unreasonably inequitable to require new entrants to pay for telephone numbers that they need only because the incumbent local exchange carriers (“ILECs”) set up a rate center system that adversely affects efficient number utilization. Even under the new pooling requirements, incumbent landline and wireless carriers will have a plethora of numbers remaining in their thousand blocks, and be unlikely to seek telephone numbers at an auction to the same extent that new entrants would. In effect, then, new entrants would be

required to pay for ILEC inefficiency. The irony and unreasonably discriminatory nature of this effect is undeniable.

Moreover, PCS operators, and other new entrants who have been required to purchase spectrum at auction, have paid once for the right to serve subscribers in their service territory. Requiring these same operators to go to auctions to obtain numbers would, in effect, be charging them again to serve the same subscriber base. To require PCS operators to pay for numbers after they have already paid for spectrum would be analogous to a circumstance where, after a person negotiates a price for the purchase of an automobile, he or she is then required to pay an extra amount for the keys in order to start the car and drive away. As noted above, and as with spectrum auctions, it would also impose additional substantial costs on these new entrants, not borne by incumbent cellular carriers, and further exacerbate the financial disparity which PCS carriers have been forced to accept.

Lastly, VoiceStream believes that the Commission should studiously avoid imposing any additional costs on carriers and the consumers they serve. In the last several years, the Commission has been required to impose additional costs on carriers, such as the cost of E-911 location technology, number portability and universal service. No one can deny that the costs to carriers and consumers has been significant. (AT&T and MCI, for example, now impose an 8.6 percent fee on interstate calls for universal service.) Carriers and consumers should not be required to pay more, as they would be either directly or indirectly, in the context of auctions for numbers.

## CONCLUSION

In conclusion, VoiceStream notes that the Commission's *Report & Order* is a giant step toward ensuring efficiency in the allocation and use of telephone numbering resources. The proposals contained herein allow the Commission to further its objections in that regard, while simultaneously ensuring that numbers are allocated in a timely and non-discriminatory manner to all carriers.

Respectfully submitted,

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May 19, 2000

## **CERTIFICATE OF SERVICE**

I, Courtenay P. Adams, do hereby certify that on this 19<sup>th</sup> day of May 2000, a copy of the foregoing was served, by hand delivery, to the parties listed below:

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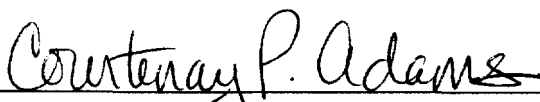
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